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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/793,416	10/23/1997	JOHN THOMAS HARE	18872.0056	5267

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EXAMINER

BEHREND, HARVEY E

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 06/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/793416

Applicant(s)

Hare et al

Examiner

Behren

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 3/24/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-8 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-8 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 are rejected under U.S.C. 102 (b) as being clearly anticipated by any of Sedlak et al, Breton et al or Weinberger.

Applicants arguments are unpersuasive. The references each illustrate structures as claimed. Note that the structure of any of the references can be shaped or molded into any shape desired, including a curved shape, e.g. see col. 12 of Breton et al and page 3 of Weinberger.

The claimed “cylindrical body” is considered as reading on the cylindrical shaped shields disclosed in each of the references.

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Note that each of the references states their shields can be used in the form of wearing apparel such as gloves, aprons, garments, suits, etc. (see for example, col. 15 lines 38+ of Breton et al; page 1 lines 25+, page 3 lines 87+ and page 4 lines 56+ of Weinberger and; and col. 2 lines 7+, col. 7 lines 57+ of Sedlak et al).

Note that a glove, particularly the portion having the opening through which the hand is inserted, is clearly of a cylindrical shape. Applicants claim language reads on such.

Applicants claim language also reads on additional teachings in Breton et al (e.g. see col. 12 lines 29-31 which refer to a sheet bent around a 1/8 inch radius (which inherently results in a cylindrical shaped body) and, col. 15 lines 18+ (which refer to the making of orthopedic casts (which are inherently cylindrical shaped).

Note that this curved shaped of any of the references is inherently capable of surrounding a radiation source. To meet the actual claim language, it is only necessary for this capability to be present.

As to limitations which are considered to be inherent in a reference, note the case law of In re Ludtke, 169 USPQ 563, In re Swinehart, 169 USPQ 226, In re Fitzgerald, 205 USPQ 594, In re Best et al, 195 USPQ 430, and In re Brown, 173 USPQ 685, 688.

4. Claims 1-7 are rejected under 35 U.S.C. 103 (a) as being unpatentable over either Breton et al or Weinberger.

Note the discussion of the references in section 3 above.

Claim 7 recites a thickness for the core layer of 5 to 50 mm. However, the core layer of either reference can clearly be made of any thickness desired (including in the range 5 to 50 mm) depending on the degree of shielding desired and, to so modify either reference would accordingly have been prima facie obvious. Note particularly that such is what is essentially indicated in the sentence bridging pages 3 and 4 of Weinberger.

Additionally, as set forth in MPEP 2144.04 section IV, a mere change in size does not in itself, impart patentability.

5. Claim 7 is rejected under 35 U.S.C. 102 (b) as being clearly anticipated by Sedlak et al.

Note col. 4.

6. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Sedlak et al, Breton et al, or Weinberger as applied to claims 1-6 above, and further in view of any of Leguillon, Orrison, Jr., or Tarlow

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The Examiner in section 3 above has stated that applicants claimed cylindrical body reads on a glove. If applicant is not convinced of such, resort maybe had to the teachings thereof in Leguillon (note Fig. 3 which shows the cylindrical shaped portion through which the hand is inserted and, Fig. 4 which shows the cylindrical shaped portion in which a finger is inserted).

Orrison, Jr., in Fig. 10 likewise shows a glove having a cylindrical shaped portion and in Fig. 6 A shows a cylindrical shaped garment or apron which encircles the body (see also col. 11 lines 62+).

Tarlow states his radiation shielding material in sheet form can be wrapped around a pipe carrying radioactive material (e.g. see col. 9 line 1+ as well as the abstract and col. 2 lines 1+).

Accordingly, it would have been prima facie obvious that the radiation shielding material in sheet form in any of the primary references can be used as a wrapping around a pipe as in Tarlow or to form a glove having cylindrical shaped portions as in either Leguillon or Orrison, Jr., or to form a cylindrical shaped garment or apron which encircles the body as in Orrison, Jr., because such is no more than conventionally known art recognized uses and expedients as evidenced by the above referenced teachings in any of the secondary references.

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7. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Breton et al or Weinberger as applied to claims 1-7 above, and further in view of any of Leguillon, Orrison, Jr., or Tarlow, for the reasons set forth in section 6 above.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sedlak et al as applied to claim 7 above, and further in view of any of Leguillon, Orrison, Jr., or Tarlow, for the reasons set forth in section 6 above.

9. Claims 1-8 are rejected under U.S.C. 103 (a) as being unpatentable over any of Breton et al, Sedlak et al, or Weinberger alone or with Harrison, alone or with any of Cote, Fry et al or McClintock, for the reasons set forth in section 7 of the 12/26/01 Office action and in, section 3 above.

Applicants arguments are unpersuasive of any error.

Applicant argues that the secondary reference of Harrison fails to disclose a shield which is embedded with a radiation shielding material.

This argument of applicants is incorrect.

Note for example the abstract of Harrison, which refers to particles of lead oxide supported in a rubber matrix.

Harrison also states that the shield 21 can be formed from sheet material wrapped around the accelerating tube 15 to form a shielding enclosures or tube 21, see for example, col. 2 lines 19+ which states:

“In accordance with the present invention, the emission of X-rays from the accelerating tube 15 itself is substantially reduced by means of a shield 21 which surrounds the accelerating tube from the source 11 to the utilization means 13. A preferred material for shield 21 is black rubber

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filled with lead oxide. This materials is available commercially from a variety of sources for use in X-ray laboratory aprons. A sheet of this material may be wrapped around the accelerating tube 15 to form a shielding enclosure or tube 21". (Underlining added).

Additionally, the secondary references of Fry et al and McClintock are each directed to a "radiation" shielding material (e.g. insulation which shields against thermal insulation) in sheet form which is wrapped around a pipe (the same as in the secondary reference of Harrison!)

Thus, the secondary references are considered as being in the same art area (radiation shielding) as each of the primary references.

The secondary reference of Cote was cited to show that this concept or expedient of curving or bending a sheet until the two edges meet so as to form a tubular/cylindrical shaped body, is notoriously well known irregardless of the particular art involved, i.e. it is a general concept or expedient known and applicable in all arts.

10. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over any of Breton et al, Sedlak et al, or Weinberger, in view of any of Frevel, Labino or Japan 0552799.

The primary references have been discussed above. The structures of any of the primary references are made in sheet form and shaped or curved as desired. It is conventionally known in the art to utilize radiation shielding for pipes carrying a radiation emitting material and it would have been obvious on its face to so utilize the radiation shielding of any of the primary references. In any event, such would have been obvious in view of the teachings thereof in any of Frevel, Labino or Japan 0052799.

As to applicants claim 8, note that the most obvious manner of wrapping said sheet around a pipe is to cut it to size such that the cut ends abut each other when the sheet is wrapped

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around the pipe (thus in effect, providing a longitudinal slit) and, applicants claim 8 reads on this obvious manner of wrapping.

Alternatively, note that the secondary reference of Japan 0052799 shows in Fig. 4 it is a known expedient to form the tubular or cylindrical shaped body with two longitudinal slits and to so modify any of the primary reference would have been prima facie obvious as such is the use of conventionally known art expedients.

11. The other references cited further illustrate pertinent art.
12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harvey Behrend whose telephone number is (703) 305-1831. The examiner can normally be reached on Tuesday to Friday.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

HBehrend/jph

6/11/02



HARVEY E. BEHREND
PRIMARY EXAMINER